

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

AVID LIFE MEDIA, INC., *et al.*,

Plaintiffs,

vs.

INFOSTREAM GROUP, INC., *et al.*,

Defendant,

and Related Counterclaims.

Case No. CV12-09201 DDP (AJWx)
[related to Case No. CV12-09315 DDP
(AJWx)]

**PROTECTIVE ORDER
DISCOVERY MATTER**

WHEREAS, each of the parties to the above-captioned action, Plaintiffs and Counter-Defendants Avid Life Media, Inc. (“Avid Life”), Avid Dating Life, Inc. dba Ashley Madison (“Avid Dating” or “Ashley Madison”), and Established Men, Inc. (“EMI”) (collectively, “Avid” or “Plaintiffs”), on the one hand, and Defendant and Counter-Claimant Infostream Group, Inc. (“Infostream”) and Defendant Lead Wey aka Brandon Wade (“Lead Wey”) (collectively, “Defendants”), on the other hand, (inclusively, the “Parties”), may produce or seek discovery of documents, information, or other materials that may contain or relate to personal, confidential, proprietary, or trade secret information of another party or a third party;

IT IS HEREBY ORDERED that the following Protective Order be entered in this Action:

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 14.4, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal.

2. DEFINITIONS

2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.2 “CONFIDENTIAL” Information or Items: information designated as

1 “CONFIDENTIAL” (regardless of how it is generated, stored, or maintained) shall
 2 mean and include any document, thing, deposition testimony, interrogatory answers,
 3 responses to requests for admissions and requests for production, disclosures
 4 pursuant to Federal Rule of Civil Procedure 26, or other information provided in
 5 discovery or settlement communications and negotiations in this Action, which
 6 contains information that is non-public, confidential, and/or proprietary, whether
 7 personal, such as information regarding employees’ personal and employment
 8 information including without limitation social security numbers and personal bank
 9 account numbers, or business related, such as information that constitutes, reflects, or
 10 concerns trade secrets, know-how or proprietary data, business, financial, or
 11 commercial information, the disclosure of which is likely to cause harm to the
 12 competitive position of the party making the confidentiality designation, including
 13 for example non-public customer lists, past product development, past
 14 business/strategic plans, past sales projections, past marketing plans, and non-public
 15 contracts. Certain limited types of “CONFIDENTIAL” information may be further
 16 designated, as defined and detailed below, as “Confidential Attorneys’ Eyes Only
 17 Information”

18 2.3 Counsel: Outside Counsel of Record (as well as their support staff).

19 2.4 Designating Party: a Party or Non-Party that designates information or
 20 items that it produces in disclosures or in responses to discovery as
 21 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
 22 ONLY”

23 2.5 Disclosure or Discovery Material: all items or information, regardless of
 24 the medium or manner in which it is generated, stored, or maintained (including,
 25 among other things, testimony, transcripts, and tangible things), that are produced or
 26 generated in disclosures or responses to discovery in this matter.

27 2.6 Expert: a person with specialized knowledge or experience in a matter
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1 pertinent to the litigation who (1) has been retained by a Party or its counsel to serve
2 as an expert witness or as a consultant in this action, (2) is not a past or current
3 employee of a Party, (3) is not a current employee of a party's competitor, and (4) at
4 the time of retention, is not anticipated to become an employee of a Party.

5 2.7 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"

6 Information or Items: extremely sensitive "Confidential Information or Items,"
7 disclosure of which to another Party or Non-Party would create a substantial risk of
8 serious competitive harm that could not be avoided by less restrictive means. This
9 type of information and items include, for example, pending patent applications,
10 products currently in development and not yet commercially released, current
11 business/strategic plans, future sales/financial projections, future marketing plans,
12 detailed sales and financial data, or other highly sensitive or proprietary competitive
13 or financial information.

14 2.8 Non-Party: any natural person, partnership, corporation, association, or
15 other entity not named as a Party to this action.

16 2.9 Outside Counsel of Record: attorneys who are not employees of a party
17 to this action but are retained to represent or advise a party to this action and have
18 appeared in this action on behalf of that party or are affiliated with a law firm which
19 has appeared on behalf of that party.

20 2.10 Party: any party to this action, including all of its officers, directors,
21 employees, consultants, and retained experts.

22 2.11 Producing Party: a Party or Non-Party that produces or provides
23 Disclosure or Discovery Material in this action.

24 2.12 Professional Vendors: persons or entities that provide litigation support
25 services (e.g., photocopying, videotaping, translating, preparing exhibits or
26 demonstrations, and organizing, storing, or retrieving data in any form or medium)
27 and their employees and subcontractors.
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1 2.13 Protected Material: any Disclosure or Discovery Material that is
2 designated as “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL –
3 ATTORNEYS’ EYES ONLY.”

4 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material
5 from a Producing Party.

6 3. SCOPE

7 The protections conferred by this Stipulation and Order cover not only
8 Protected Material (as defined above), but also (1) any information copied or
9 extracted from Protected Material; (2) all copies, excerpts, summaries, or
10 compilations of Protected Material; and (3) any testimony, conversations, or
11 presentations by Parties or their Counsel that might reveal Protected Material.
12 However, the protections conferred by this Stipulation and Order do not cover the
13 following information: (a) any information that is in the public domain at the time of
14 disclosure to a Receiving Party or becomes part of the public domain after its
15 disclosure to a Receiving Party as a result of publication not involving a violation of
16 this Order, including becoming part of the public record through trial or otherwise;
17 and (b) any information known to the Receiving Party prior to the disclosure or
18 obtained by the Receiving Party after the disclosure from a source who obtained the
19 information lawfully and under no obligation of confidentiality to the Designating
20 Party. Any use of Protected Material at trial shall be governed by a separate
21 agreement or order. Notwithstanding the above, by stipulating to the entry of this
22 Order, Plaintiffs do not waive their right to claim that the September 27, 2011
23 Settlement Agreement upon which they base some of their claims in this action is
24 confidential and constitutes “CONFIDENTIAL” information subject to this Order.

25 4. DURATION

26 Even after final disposition of this litigation, the confidentiality obligations
27 imposed by this Order shall remain in effect until a Designating Party agrees
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1 otherwise in writing or a court order otherwise directs. Final disposition shall be
2 deemed to be the later of (1) dismissal of all claims and defenses in this action, with
3 or without prejudice; and (2) final judgment herein after the completion and
4 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
5 including the time limits for filing any motions or applications for extension of time
6 pursuant to applicable law.

7 **5. DESIGNATING PROTECTED MATERIAL**

8 **5.1 Exercise of Restraint and Care in Designating Material for Protection.**

9 Each Party or Non-Party that designates information or items for protection
10 under this Order must take care to limit any such designation to specific material that
11 qualifies under the appropriate standards. To the extent it is practical to do so, the
12 Designating Party must designate for protection only those parts of material,
13 documents, items, or oral or written communications that qualify – so that other
14 portions of the material, documents, items, or communications for which protection
15 is not warranted are not swept unjustifiably within the ambit of this Order.

16 Mass, indiscriminate, or routinized designations are prohibited. Designations
17 that are shown to be clearly unjustified or that have been made for an improper
18 purpose (e.g., to unnecessarily encumber or retard the case development process or
19 to impose unnecessary expenses and burdens on other parties) expose the
20 Designating Party to sanctions.

21 If it comes to a Designating Party's attention that information or items that it
22 designated for protection do not qualify for protection at all or do not qualify for the
23 level of protection initially asserted, that Designating Party must promptly notify all
24 other parties that it is withdrawing the mistaken designation.

25 **5.2 Manner and Timing of Designations.** Except as otherwise provided in
26 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
27 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
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1 under this Order must be clearly so designated before the material is disclosed or
2 produced. Designation in conformity with this Order requires:

3 (a) for information in documentary form (e.g., paper or electronic
4 documents, but excluding transcripts of depositions or other pretrial or trial
5 proceedings), that the Producing Party affix the legend “CONFIDENTIAL” or
6 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” to each page that
7 contains protected material. If only a portion or portions of the material on a page
8 qualifies for protection, the Producing Party also must clearly identify the protected
9 portion(s) (e.g., by making appropriate markings in the margins) and must specify,
10 for each portion, the level of protection being asserted.

11 A Party or Non-Party that makes original documents or materials available for
12 inspection need not designate them for protection until after the inspecting Party has
13 indicated which material it would like copied and produced. During the inspection
14 and before the designation, all of the material made available for inspection shall be
15 deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the
16 inspecting Party has identified the documents it wants copied and produced, the
17 Producing Party must determine which documents, or portions thereof, qualify for
18 protection under this Order. Then, before producing the specified documents, the
19 Producing Party must affix the appropriate legend (“CONFIDENTIAL” or
20 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) to each page that
21 contains Protected Material. If only a portion or portions of the material on a page
22 qualifies for protection, the Producing Party also must clearly identify the protected
23 portion(s) (e.g., by making appropriate markings in the margins) and must specify,
24 for each portion, the level of protection being asserted.

25 (b) for testimony given in deposition or in other pretrial or trial
26 proceedings, that the Designating Party identify on the record, before the close of the
27 deposition, hearing, or other proceeding, all protected testimony and specify the level
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1 of protection being asserted. When it is impractical to identify separately each
2 portion of testimony that is entitled to protection or it appears that substantial
3 portions of the testimony may qualify for protection, the Designating Party may
4 invoke on the record (before the deposition, hearing, or other proceeding is
5 concluded) a right to have up to 21 days from the date the deposition transcript is
6 received by counsel for the Designating Party to identify the specific portions of the
7 testimony as to which protection is sought and to specify the level of protection
8 being asserted. Only those portions of the testimony that are appropriately designated
9 for protection within the 21 days from the date the deposition transcript is received
10 by counsel for the Designating Party shall be covered by the provisions of this
11 Stipulated Protective Order. Alternatively, a Designating Party may specify, at the
12 deposition or up to 21 days from the date the deposition transcript is received by
13 counsel for the Designating Party if that period is properly invoked, that the entire
14 transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
15 ATTORNEYS’ EYES ONLY.”

16 Parties shall give the other parties notice if they reasonably expect a
17 deposition, hearing or other proceeding to include Protected Material so that the
18 other parties can ensure that only authorized individuals who have signed the
19 “Acknowledgment and Agreement to Be Bound” (Exhibit A) are present at those
20 proceedings. The use of a document as an exhibit at a deposition shall not in any way
21 affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
22 ATTORNEYS’ EYES ONLY.”

23 Transcripts containing Protected Material shall have an obvious legend on the
24 title page that the transcript contains Protected Material, and the title page shall be
25 followed by a list of all pages (including line numbers as appropriate) that have been
26 designated as Protected Material and the level of protection being asserted by the
27 Designating Party. The Designating Party shall inform the court reporter of these
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1 requirements. Any transcript that is prepared before the expiration of a 21-day period
 2 for designation shall be treated during that period as if it had been designated
 3 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless
 4 otherwise agreed. After the expiration of that period, the transcript shall be treated
 5 only as actually designated.

6 (c) for information produced in some form other than documentary and
 7 for any other tangible items, that the Producing Party affix in a prominent place on
 8 the exterior of the container or containers in which the information or item is stored
 9 the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
 10 EYES ONLY”. If only a portion or portions of the information or item warrant
 11 protection, the Producing Party, to the extent practicable, shall identify the protected
 12 portion(s) and specify the level of protection being asserted.

13 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
 14 failure to designate qualified information or items does not, standing alone, waive
 15 the Designating Party’s right to secure protection under this Order for such material.
 16 Upon timely correction of a designation, the Receiving Party must make reasonable
 17 efforts to assure that the material is treated in accordance with the provisions of this
 18 Order.

19 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

20 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
 21 designation of confidentiality at any time. Unless a prompt challenge to a
 22 Designating Party’s confidentiality designation is necessary to avoid foreseeable,
 23 substantial unfairness, unnecessary economic burdens, or a significant disruption or
 24 delay of the litigation, a Party does not waive its right to challenge a confidentiality
 25 designation by electing not to mount a challenge promptly after the original
 26 designation is disclosed.

27 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
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1 resolution process by providing written notice of each designation it is challenging
2 and describing the basis for each challenge. To avoid ambiguity as to whether a
3 challenge has been made, the written notice must recite that the challenge to
4 confidentiality is being made in accordance with this specific paragraph of the
5 Protective Order. The parties shall attempt to resolve each challenge in good faith
6 and must begin the process by conferring directly (in voice to voice dialogue; other
7 forms of communication are not sufficient) within 14 days of the date of service of
8 notice. In conferring, the Challenging Party must explain the basis for its belief that
9 the confidentiality designation was not proper and must give the Designating Party
10 an opportunity to review the designated material, to reconsider the circumstances,
11 and, if no change in designation is offered, to explain the basis for the chosen
12 designation. A Challenging Party may proceed to the next stage of the challenge
13 process only if it has engaged in this meet and confer process first or establishes that
14 the Designating Party is unwilling to participate in the meet and confer process in a
15 timely manner. Nothing in this Order shall be construed as releasing a Party from its
16 obligation to resolve discovery disputes, including a dispute over a confidentiality
17 designation, pursuant to Central District of California Local Rule 37-1 and 37-2.

18 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
19 court intervention, the Designating Party shall file and serve a motion to retain
20 confidentiality within 30 days of the initial notice of challenge or within 14 days of
21 the parties agreeing that the meet and confer process will not resolve their dispute,
22 whichever is later. Each such motion must be accompanied by a competent
23 declaration affirming that the movant has complied with the meet and confer
24 requirements imposed in the preceding paragraph. Failure by the Designating Party
25 to make such a motion including the required declaration within 30 days (or 14 days,
26 if applicable) shall automatically waive the confidentiality designation for each
27 challenged designation. In addition, the Challenging Party may file a motion
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1 challenging a confidentiality designation at any time if there is good cause for doing
2 so, including a challenge to the designation of a deposition transcript or any portions
3 thereof. Any motion brought pursuant to this provision must be accompanied by a
4 competent declaration affirming that the movant has complied with the meet and
5 confer requirements imposed by the preceding paragraph.

6 The burden of persuasion in any such challenge proceeding shall be on the
7 Designating Party. Frivolous challenges and those made for an improper purpose
8 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
9 expose the Challenging Party to sanctions. If the Challenging Party supports its
10 challenge of the Producing Party's designation of documents with an argument that
11 would apply equally to the manner in which the Challenging Party designated its
12 own documents, such challenge shall be presumptively frivolous. Unless the
13 Designating Party has waived the confidentiality designation by failing to file a
14 motion to retain confidentiality as described above, all parties shall continue to
15 afford the material in question the level of protection to which it is entitled under the
16 Producing Party's designation until the court rules on the challenge.

17 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

18 **7.1 Basic Principles.** A Receiving Party may use Protected Material that is
19 disclosed or produced by another Party or by a Non-Party in connection with this
20 case only for prosecuting, defending, or attempting to settle this litigation. Such
21 Protected Material may be disclosed only to the categories of persons and under the
22 conditions described in this Order. When the litigation has been terminated, a
23 Receiving Party must comply with the provisions of section 13 below (FINAL
24 DISPOSITION).

25 Protected Material must be stored and maintained by a Receiving Party at a
26 location and in a secure manner that ensures that access is limited to the persons
27 authorized under this Order.
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1 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
2 otherwise ordered by the court or permitted in writing by the Designating Party, a
3 Receiving Party may disclose any information or item designated
4 “CONFIDENTIAL” only to:

5 (a) the Receiving Party’s Outside Counsel of Record in this action, as
6 well as employees of said Outside Counsel of Record;

7 (b) the officers, directors, and employees of the Receiving Party to
8 whom disclosure is reasonably necessary for this litigation and who have signed the
9 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

10 (c) Experts (as defined in this Order) of the Receiving Party to whom
11 disclosure is reasonably necessary for this litigation and who have signed the
12 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

13 (d) the court and its personnel;

14 (e) court reporters and their staff, professional jury or trial consultants,
15 and Professional Vendors to whom disclosure is reasonably necessary for this
16 litigation and who have signed the “Acknowledgment and Agreement to Be Bound”
17 (Exhibit A);

18 (f) during their depositions, witnesses in the action to whom disclosure
19 is reasonably necessary and who have signed the “Acknowledgment and Agreement
20 to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or
21 ordered by the court. Pages of transcribed deposition testimony or exhibits to
22 depositions that reveal Protected Material must be separately bound by the court
23 reporter and may not be disclosed to anyone except as permitted under this
24 Stipulated Protective Order.

25 (g) the author or recipient of a document containing the information or a
26 custodian or other person who otherwise possessed or knew the information,
27 including if such author or recipient is a deponent, even if such deponent does not
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1 sign Exhibit A.

2 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
 3 ONLY” Information or Items. Unless otherwise ordered by the court or permitted in
 4 writing by the Designating Party, a Receiving Party may disclose any information or
 5 item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only
 6 to:

7 (a) the Receiving Party’s Outside Counsel of Record in this action, as
 8 well as employees of said Outside Counsel of Record to whom it is reasonably
 9 necessary to disclose the information for this litigation and who have signed the
 10 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
 11 A;

12 (b) Experts (as defined by this Order) of the Receiving Party to whom
 13 disclosure is reasonably necessary for this litigation and who have signed the
 14 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

15 (c) the court and its personnel;

16 (d) court reporters and their staff, professional jury or trial consultants,
 17 and Professional Vendors to whom disclosure is reasonably necessary for this
 18 litigation and who have signed the “Acknowledgment and Agreement to Be Bound”
 19 (Exhibit A); and

20 (e) the author or recipient of a document containing the information or a
 21 custodian or other person who otherwise possessed or knew the information,
 22 including if such author or recipient is a deponent, even if such deponent does not
 23 sign Exhibit A.

24 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
 25 OTHER LITIGATION

26 If a Party is served with a subpoena or a court order issued in other litigation
 27 that compels disclosure of any information or items designated in this action as
 28 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES

ONLY” that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful subpoena or directive from another court.

9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-Party in this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”. Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party’s confidential information in its possession, and the Party is

1 subject to an agreement with the Non-Party not to produce the Non-Party's
 2 confidential information, then the Party shall:

3 1. promptly notify in writing the Requesting Party and the Non-
 4 Party that some or all of the information requested is subject to a confidentiality
 5 agreement with a Non-Party;

6 2. promptly provide the Non-Party with a copy of the Stipulated
 7 Protective Order in this litigation, the relevant discovery request(s), and a reasonably
 8 specific description of the information requested; and

9 3. make the information requested available for inspection by the
 10 Non-Party.

11 (c) Subject to applicable contractual provisions, if the Non-Party fails
 12 to object or seek a protective order from this court within 14 days of receiving the
 13 notice and accompanying information, the Receiving Party may produce the Non-
 14 Party's confidential information responsive to the discovery request. If the Non-Party
 15 timely seeks a protective order, the Receiving Party shall not produce any
 16 information in its possession or control that is subject to the confidentiality
 17 agreement with the Non-Party before a determination by the court. Absent a court
 18 order to the contrary, the Non-Party shall bear the burden and expense of seeking
 19 protection in this court of its Protected Material. Nothing in this provision shall
 20 prohibit a party from seeking a court order to enable it to produce a Non-Party's
 21 confidential information in order to confirm it is not breaching a contract.

22 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

23 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
 24 Protected Material to any person or in any circumstance not authorized under this
 25 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
 26 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
 27 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
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persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court.

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

12.3 Filing Protected Material. Without written permission from the Designating Party or a court order secured after appropriate notice to all interested persons, a Party may not file in the public record in this action any Protected Material. A Party that seeks to file under seal any Protected Material must comply with all applicable Local Rules for the Central District of California. Protected

1 Material may only be filed under seal pursuant to a court order authorizing the
2 sealing of the specific Protected Material at issue.

3 12.4 Court and Court Personnel. The Court and its personnel are not subject
4 to this Order and are not required to sign Exhibit A.

5 12.5 Disclosure Prior to Entry of this Order. Pursuant to the Parties'
6 agreement set forth in their Joint Rule 26(f) Report (Docket Entry 21), if a Party
7 decides to produce information or documents subject to this Order before the Court
8 has signed this Order, the Party may nonetheless designate such information or
9 documents pursuant to this Order as if it had already been entered and, once the
10 Order is executed, it will be deemed retroactive to the date of the Party's production
11 of such information or documents.

12 13. FINAL DISPOSITION

13 Within 60 days after the final disposition of this action, as defined in
14 paragraph 4, each Receiving Party must return all Protected Material to the
15 Producing Party or destroy such material. As used in this subdivision, "all Protected
16 Material" includes all copies, abstracts, compilations, summaries, and any other
17 format reproducing or capturing any of the Protected Material. Whether the
18 Protected Material is returned or destroyed, the Receiving Party must submit a
19 written certification to the Producing Party (and, if not the same person or entity, to
20 the Designating Party) by the 60-day deadline that (1) identifies (by category, where
21 appropriate) all the Protected Material that was returned or destroyed and (2) affirms
22 that the Receiving Party has not retained any copies, abstracts, compilations,
23 summaries or any other format reproducing or capturing any of the Protected
24 Material. Notwithstanding this provision, Counsel are entitled to retain an archival
25 copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal
26 memoranda, correspondence, deposition and trial exhibits, expert reports, attorney
27 work product, and consultant and expert work product, even if such materials contain
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1 Protected Material. Any such archival copies that contain or constitute Protected
2 Material remain subject to this Protective Order as set forth in Paragraph 4. The
3 Parties acknowledge that electronic discovery makes it difficult to keep track of all
4 discovery and therefore agree to use their best efforts to ensure compliance with the
5 letter and spirit of this provision.

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7 IT IS SO ORDERED

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9 /s/ Andrew J. Wistrich

10 DATED: 4/22/13

11 Hon. Andrew J. Wistrich

12 United States Magistrate Judge
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EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
 _____ [print or type full address], declare under penalty of perjury
 that I have read in its entirety and understand the Stipulated Protective Order that
 was issued by the United States District Court for the Central District of California
 on _____ in the case of _____ **[insert formal name of the case and
 the number and initials assigned to it by the court]**. I agree to comply with and to
 be bound by all the terms of this Stipulated Protective Order and I understand and
 acknowledge that failure to so comply could expose me to sanctions and punishment
 in the nature of contempt. I solemnly promise that I will not disclose in any manner
 any information or item that is subject to this Stipulated Protective Order to any
 person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court
 for the Central District of California for the purpose of enforcing the terms of this
 Stipulated Protective Order, even if such enforcement proceedings occur after
 termination of this action.

I hereby appoint _____ [print or type full name] of
 _____ [print or type full address and telephone
 number] as my California agent for service of process in connection with this action
 or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____
 [printed name]

Signature: _____
 [signature]